



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा, प्रकाशित

शिमला, वीरवार, २८ अगस्त, १९९७/६ भाद्रपद, १९१९

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-२, २५ जुलाई, १९९७

संख्या ३-१२/९७-इ० एल० एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या ८२/हि० प्र०-लो० सं० २/९६, दिनांक ३० जून, १९९७ तदनुसार ९ अगस्त, १९१९ (शक) अंग्रेजी रूपान्तर सहित, जिसमें हिमाचल प्रदेश उच्च न्यायालय, शिमला की निर्वाचन अर्जी संख्या २, वर्ष १९९६ का निर्णय निहित है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,

परमिन्दर माथुर;
मुख्य निर्वाचन अधिकारी।

भारत निर्वाचन आयोग

नई दिल्ली,

30 जून, 1997

दिनांक—

9 आषाढ़, 1919 (शक)

अधिसूचना

संख्या 82/हि0प्र0-लो0स0/9/96.— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1996 की अर्जी संख्या 2 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय की तारीख 29 मई, 1997 के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश से,

हस्ताक्षरित/-

(के0 जे0 राव),

सचिव

भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

New Delhi,

30th June, 1997

Dated—

9 Ashadha, 1919 (Saka)

NOTIFICATION

No. 82/HP-HP/2/96.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Judgement, dated 29th May, 1997 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 2 of 1996.

Election Petition No, 2 of 1996

and

E.M.P. No. 1 of 1997

Date of decision : May 29, 1997

Adan Singh

..Petitioner.

Versus

Sukh Ram

..Respondent.

For the Petitioner : Mr. R. K. Sharma, Mr. B. P. Sharma and Mrs. Shubh Mahajan, Advocates.

For the Respondent : Mr. Vijay Bahuguna, Sr. Advocate with Mr. K. D. Sood, Mr. G. D. Verma and Mr. C. L. Sharma, Advocates.

P. K. PALLI, JUDGE

Election for the 2—Mandi Parliamentary constituency was held on April 27 and May 7, 1996. The petitioner was a candidate of the Bhartiya Janta Party and contested the said election in that capacity. This petition has been filed laying challenge to the election of the respondent on a number of grounds.

2. Respondent Sukh Ram contested this election on the Congress ticket and was declared elected to the Lok Sabha on May 12, 1996. As many as 14 candidates in all contested the election. The petitioner secured 1,74,963 votes as against the respondent who secured 3,28,186 votes.

3. The respondent filed written statement on February 24, 1997 whereafter the filed a miscellaneous petition E. M. P. No. 1 of 1997 under Order 6, Rule 16 of the Civil Procedure Code read with Section 86 (1) of the Representation of People Act, 1951. Reply and rejoinder to this application have also been filed and in view of the preliminary objections raised, this miscellaneous petition was listed for arguments.

4. Paras 1 to 7 of the election petition are introductory in nature. The election of the respondent is sought to be set aside on the grounds given in paras 8 to 14 which are reproduced hereunder :

"8. That the maximum limit of election expenditures, as prescribed, for the election of the Lok Sabha in Himachal Pradesh, is Rs. 4,15,000/- for each parliamentary constituency. However, the respondent has spent much more than the maximum limit, as authorised and prescribed in the elections. The respondent in his return of election expenditure has shown the total expenses incurred by him in election as Rs. 1,90,257/-. An attested copy of the said return is enclosed herewith as Annexure P-1. The respondent has not submitted the true and correct return of his election expenditure and he has spent more amount than the maximum authorised limit."

"9. That during the election, the respondent got published an advertisement and articles in his favour in the Young Himachal Periodical (fortnightly), published on 1-4-1996, with the intention for campaigning, canvassing and electioneering work for securing votes for him with a view to win the elections. In the whole issue of this periodical, there are only advertisements and articles favouring respondent, who was a congress candidate. A copy of the issue of Young Himachal (1-15 April, 1996), is enclosed herewith as Annexure P-2. The respondent paid Rs. 2,00,000/- for these advertisements and articles in Annexure P-2. However, in his expenditure return, he has shown Rs. 13,770/- as advertisement expenses.

Alongwith Annexure P-2, the respondent circulated a multi-colour calendar on glossy paper depicting the respondent as founder of Modern Himachal. 1,00,000 copies of this calendar were distributed by the respondent amongst the voters in the constituency. The cost of this calendar is Rs. 5/- each and as such the total cost of 1,00,000 calendar comes to Rs. 5,00,000/-. The respondent has not included this amount of Rs. 5,00,000/- in his expenditure return. Copy of the calendar is enclosed herewith as Annexure P-3."

"10. That the respondent got published a book-let, namely, Himachal Sanchar Kranti Ka Model (Himachal—a Model of tele-communication revolution). This book-let contains multi-colour photographs of the respondent and it also contains material favour respondent. It consists of 68 pages and title cover of this book-let containing 4 pages on diamond ivory paper. The respondent got published 1,00,000 such book-lets and distributed the same amongst the voters for campaigning, canvassing and Electioneering work for securing votes a view to win the election. On this book-let the respondent spent a sum of Rs. 5,00,000/-, which amount has not been shown by the respondent in his expenditure return. This book-let has been got printed and published by the Mandi Jan Kalyan Sabha, 6/19 Subhash Marg, New Delhi, from Poompuhar Pathppagam Press, Madras, with the consent of the respondent. A copy of the book-let is enclosed herewith as Annexure P-4."

"11. That in view of the submissions made in paras 8, 9 and 10, the respondent has spent the amount in violation of Section 77 of the Act and he has exceeded the expenditure beyond the prescribed limit of Rs. 4,15,000/-. As such, the respondent is guilty of

corrupt practice under sub-section (6) of Section 123 of the Representation of People Act, 1951. Hence, his election is liable to be set aside and he is further liable to be disqualified from contesting the elections for a period of six years."

"12. That the respondent for campaigning, canvassing and electioneering work for securing votes for him in the constituency with a view to win the election mis-used the government machinery for the furtherance of the prospectus of his election from the persons in service of the government, who were gazetted officers in the Press Information Bureau and telecommunication. As such, the respondent is guilty of committing corrupt practice under sub-section (7) of Section 123 of the A t

That on 9-4-1996, Publicity incharge, District Congress Committee, Mandi, H. P., with the consent of the respondent issued a press release with the title—People Demands development not destruction. This press release was communicated to the press through FAX message and for this purpose Fax machine and facility of the government were used by the respondent. Copy of the press release is enclosed herewith as Annexure P-5. On the top of Annexure P-5, there is a mention of GMT, Chandigarh which means General Manager, Telecommunication, Chandigarh. Annexure P-5, relates to the electioneering work of respondent and it is circulated through the government machinery, that is, the General Manager, Telecommunication, Chandigarh. As such, the government machinery has been misused by the respondent for the furtherance of his election programme and prospectus."

"13. That on 9-4-1996, the respondent delivered a speech in the constituency at Dharampur in District Mandi. The contents of this speech were released by the Press Information Bureau, Government of India to the press at government expenses. The Hindi version of the press release is enclosed herewith as Annexure P-6 and the English version as Annexure P-7. This issue was also raised by the various newspapers, like the Tribune, dated 10-4-1996, Hindustan Times dated 11-4-1996, Punjab Kesari dated 10-4-1996, The Tribune dated 11-4-1996. Copies of the clippings of the news-items are enclosed herewith as Annexures P-8/A to P-8/D, respectively. The petitioner through the spokesman of the Bhartiya Janta Party Shri Ganesh Dutt made a complaint to the Election Commission of India on 12-4-1996. Copy of the complaint is enclosed herewith as Annexure P-9."

"14. That after the petitioner's complaint, aforesaid, an enquiry was conducted by the Election Commission of India and in that enquiry, the respondent was held guilty of the corrupt practice of mis-using the government machinery, as is evident from the news-item published in the Tribune dated 23-4-1996, copy of the news-item is enclosed herewith as Annexure P-10".

5. In the written statement filed by the respondent, besides raising preliminary objections that the copies supplied are not true copies of the petition; the English translation is not the correct version of the documents filed with the petition; the copies supplied are not legible; authenticated copies of all the documents and annexures have not been supplied, the petition is further said to be barred. The averments made in the petition are said to be vague, indefinite, cryptic and do not disclose enforceable cause of action. The affidavit is said to be invalid being not in conformity with the requirement of law as given in Form No. 25. It is also said that the material particulars have been withheld and the petition is liable to be summarily rejected.

6. In para 10 of the preliminary objection it has been said that the details of the material particulars, the details of the events indicating time, place, names of the persons, use of the words and expressions have not been disclosed in the petition and being vague and incomplete, the petition is liable to be dismissed.

7. On merits, in replies to paras 8 to 14, it has been stated that the averments are wrong to the knowledge of the petitioner and are denied. The allegations levelled are said to be intentionally false. It is denied that the respondent had any role in the publication of the periodical Young Himachal. It was denied that the said publication was made with the authorisation or consent of the respondent. The amount spent for advertisement in the articles contained in the periodical, is also denied.

8. The periodical is said to have been published by the proprietor with which the respondent is said to have no concern. It is specifically denied that the respondent had any role in the printing, publication as well or distribution of the special feature of the periodical and no expenditure was incurred by him in this connection. In respect of the circulation of the calendar Annexure P-3, it has been replied that the same was not printed by the proprietor of the Young Himachal with the permission, authorisation or consent of the respondent. This might have been done by the proprietor to boost the sale of the periodical as the respondent was a popular leader from the constituency. The cost of the calendar was denied and it was stated that the respondent had nothing to do with it. The other features in the periodical are said to be advertisements from political parties, individuals and other institutions.

9. It is also said that in view of Explanation 1 of Section 77 of the Representation of the People Act, the political parties, associations, body of persons, individuals are authorised to issue advertisement, publication of their own in support of a candidate without any authority or consent of such candidate and the expenses so incurred are not to be included in the return of expenditure by the candidate. The averments in respect of payment of expenses, Annexures P-2 and P-3, have been emphatically denied as baseless and mis-conceived.

10. It has also been said in reply that only that amount would be treated as election expenses having been incurred by the respondent which he has himself incurred of his free will and that the respondent has not incurred any expenditure in contravention of Section 77 of the said Act nor any corrupt practice has been committed by him as envisaged in Section 123 (7) of the Act. In respect of Annexure P-4, it has been said in the reply that the averments are denied. The respondent is not responsible for any such publication. He never consented or authorised anyone for any such publication. This publication is said to have been printed, published sometimes in February, 1996 before the announcement of the election and this had nothing to do with the electioneering.

11. It is said that it was Mandi Jan Kalyan Sabha that got 20000 copies at the cost of Rs. 2.75 per book-let and that too much prior to the declaration of the election and no amount was spent by the respondent in this respect. The first four pages of this booklet is the speech of the then Prime Minister of the country and the contents do not hold out any threat or compulsion to the electorates to vote one way or the other. It has been said that the averments lack material particulars in respect of date, place and time of the alleged payment and distribution etc. It is also said that the petition does not disclose any cause of action as material particulars have not been disclosed which are absolutely essential. It is denied that the respondent has spent any money in the election process in excess of the permissible limit of Rs. 4,15,000/-. The account has been correctly and truly furnished by him in the return of expenses.

12. In reply to para 12, the contents have been emphatically denied and it is denied that any Government machinery was misused for campaigning, canvassing in electioneering work to secure votes by the respondent. It has been specifically stated that the respondent did not misuse Government machinery for his election prospects. It has been said that if any Government officer has done something in his official capacity, the respondent cannot be held liable for any corrupt practice. The press note Annexure P-5 was not released at the instance of the respondent nor it was issued by the Publicity Incharge of the District Congress Committee. It has been denied that the machinery was mis-used for the FAX message. The document is said to be a forged one and an attempt to unnecessarily involves the respondent and that too falsely.

13. In reply to para 13, the allegations made stand denied. It is denied that the respondent in any manner utilised the services of the Press Information Bureau of the Government of India. It is also denied that the respondent ever consented for the issuance of the press release comprising Annexures P-6 and P-7. The attempt is said to have been made to manufacture evidence against the respondent. Similarly, the news items bearing in P-8/A to P-8/D are said to have been made by opposition candidates to tarnish the image of the respondent with an attempt to stall his election. The news-items are said to be highly distorted, wrong and incorrect.

14. The complaint sent to the Election Commission (Annexure P-9) is denied as false. The respondent himself wrote a letter to the Election Commission of India which is Annexure R-1 that a conspiracy was being hatched against him to malign him in the election and he was totally ignorant of the circumstances under which the statements were issued.

15. In reply to para 14 of the petition, it is stated that the same is absolutely false and incorrect. It is denied that any enquiry was held against the respondent and he was found guilty. Contents appearing in the Tribune (Annexure P-10) are said to be wrong and false.

16. In further pleas raised in the written statement, it was prayed that in view of several decisions given by the Supreme Court, the petition is liable to be dismissed as it does not disclose any triable cause of action.

17. It has been further said that mere use of the Government FAX machine for the purposes of release of press statement is not a corrupt practice as contemplated by Section 123(7) of the Act. A mere violation of the direction of the Election Commission, if any, with regard to the Code of Election Campaign is said not to be a ground for setting aside the election of the returned candidate.

18. E.M.P. No. 1 of 1997 under Order 6 Rule 17 of the Code of Civil Procedure read with Section 86(1) of the Representation of the People Act was filed by the returned candidate on February 24, 1997 with the prayer that in view of the decisions of the apex Court reported in AIR 1987 SC 1577, (*Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi* ; AIR 1990 1731, (*Lalit Kishore Chaturvedi vs. Jagdish Prasad Thada*) : AIR 1984 SC 621, (*Daulat Ram vs. Anand Sharma*) ; 1969 (3) SCC 238, (*Samant N. Balkrishna and another vs. George Fernandez and others*), the present petition is liable to be dismissed as it does not disclose any triable cause of action. It has been said in this application that the pleadings are vague and lack material particulars and do not contain necessary ingredients to constitute the charge under Section 123 (6) of the Act.

19. It has also been said that the publications were published on behalf of office bearers of the Congress Party and as such these are covered by the Explanation to Section 77 of the Act. The assertion that the respondent got the publication made is contradicted by the advertisements themselves. It is said that the petitioner has not disclosed the source of his information

or knowledge and the non-disclosure of these facts renders the pleadings vague and liable to be struck off. It has also been said that the petitioner has not disclosed the time, date, place where the calendar was distributed or what was the role of the respondent. No particulars in respect of time, date, place and mode of payment of the amount have been disclosed. It is also said in the application that in case the book-let is printed or published before the elections were notified, the expenses would not fall within the mischief of Section 77 of the Act. In respect to the role of District Congress Committee, it is said that there is no averment that the FAX machine of the Communication Ministry for the release of the press note was used with the consent of the respondent. Similar plea has been raised with respect to the speech made by the respondent on April 9, 1996 at Dharampur. The affidavit filed with the election petition is said to be not in conformity with the provisions of the Act and the election petition is said to be liable for dismissal at the threshold itself.

20. Mr. Bahuguna, learned Senior Advocate, appearing for the returned candidate, contends that though the petitioner has levelled corrupt practices in the petition having been committed by the respondent, yet the material facts constituting the corrupt practices have not been indicated nor the petitioner has given full particulars of the said corrupt practices with the result that the petition is liable to be dismissed as not disclosing a triable cause of action.

21. The learned counsel has taken me through all the annexures which are relied upon by the petitioner in support of the averments made in the petition and after carefully scrutinising each of these documents, it is stated that there are absolutely no averments as to the printing and publication of these documents and further the averments lack in time or place or locality where these were distributed. It is being pointedly argued that the averments are totally silent in respect of the consent of the respondent to the printing, publication and distribution of this material. In further support of his contention, reliance is placed by the learned counsel on (1995) 5 SCC 347, (*Gajanan Krishnaji Bapat and another vs. Dattaji Raghobaji Meghe and another*); AIR 1991 Allahabad 145, (*Ali Singhani Bhagwandas Madhav Singh vs. Shri Rajiv Gandhi*); AIR 1987 SC 1547, (*Dhartipakar Madan Lal Agarwal vs. Shri Rajiv Gandhi*); AIR 1986 SC 1253, (*Azhar Hussain vs. Rajiv Gandhi*); and a judgment given by this Court in Election Petition No. 1 of 1995, (*Bipin Singh Parmar vs. Kanwar Durga Chand*, decided on April 10, 1997).

22. Mr. R. K. Sharma, learned counsel for the petitioner in reply, contends that necessary facts as required by law, have been pleaded in the petition and the allegations are specific that the money was paid by the respondent. The learned counsel has further laid stress on the averments having been made in the petition and contends that the averments would be proved at the stage of evidence and no case has been made out for the rejection of the petition before the actual trial is held.

23. Before the rival contentions raised by the learned counsel for the parties are appreciated, it would be proper to keep in mind the law in this respect as laid down by the apex Court as well as by different High Courts in the country.

24. In AIR 1991 Allahabad 145, (*Ali Singhani Bhagwandas Madhav Singh vs. Shri Rajiv Gandhi*), it has been held that in case the paras in the petition are vague and indefinite and do not disclose a cause of action and further neither material facts are set out nor the details of the full particulars of the alleged corrupt practice are given, the petition would be liable to be dismissed.

25. In AIR 1976 SC 744, (*Udhav Singh vs. Madhav Rao Scindhia*), the Hon'ble Supreme Court has laid down at page 752 like this :

"The distinction between 'material facts' and 'material particulars' is important because different consequences may follow from a deficiency of such facts or particulars

in the pleadings. *Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16 Code of Civil Procedure. If the petition is passed solely on these allegations which suffer from lack of material of facts the petition is liable to be summarily rejected for want of a cause of action.* In the case of a petition suffering from a deficiency of material particulars the Court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."

(Emphasis supplied)

"all the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice "material facts", would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts, which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of Section (1) (a)."

26. In AIR 1984 SC 621 (*Daulat Ram Chauhan vs. Anani Sharma*) the Hon'ble Supreme Court has laid down the following tests :

"We must remember that in order to constitute corrupt practice which entails not only the dismissal of the election petition but also other serious consequences like debarring the candidature concerned from contesting a future election for a period of six years, the allegations must be very strongly and narrowly construed to the very spirit and letter of the law. In other words in order to constitute corrupt practices the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings :

- (1) Direct and detailed nature of corrupt practice as defined in the Act.
- (2) Details of every important particular must be stated giving the time, place, names of persons, use of words and expressions, etc.
- (3) It must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent."

27. In AIR 1969 SC 1201, (*Samant N. Bala Krishna vs. George Fernandez*, the observations made at page 1212 would be relevant to be kept in view:

"First, Section 83 of the Act is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. Second, omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. Third, the function of particulars is to present in full a picture of the cause of action to make the opposite party understand the case he will have to meet. Fourth, material facts and particulars are distinct matters. Material facts will mention statements of fact and particulars will set out the names of persons with the date, time and place. Fifth, material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. Sixth,

in stating the material facts, it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost. The fact which constitutes a corrupt practice, must be stated and the fact must be correlated to one of the heads of corrupt practice. Seventh, an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the obtaining or procuring of assistance unless the exact type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the election are alleged as statements of facts."

It was further observed that :

"Section 83 requires that the petition must contain a concise statement of the material facts on which the "petitioner relies and the fullest possible particulars of the corrupt practice alleged. "Material facts" and "particulars" may overlap but the word "material" shows that the grounds of corrupt practice and the facts necessary to formulate a complete cause of action must be stated. The function of the particulars is to present as full a picture of the cause of action to make the opposite party understand the case he will have to meet facts stated in the petition relating to any corrupt practice must be sufficient to constitute a cause of action. In other words the fact must bring out all the ingredients of the corrupt practice alleged. If the facts stated fail to satisfy that requirement then they do not give rise to a triable issue. Such a defect cannot be cured by any amendment after the period of limitation for filing the election petition."

The Hon'ble Supreme Court further observed as under :

"If the accusation made is nebulous and is capable of being made use of for establishing more than one charge or it does not make out a corrupt practice at all then the charge fails at the very threshold."

(Emphasis supplied)

28. In AIR 1986 SC 1253, (*Azhar Hussain vs. Rajiv Gandhi.*), the following paragraphs, taken from the judgment may usefully be reproduced :

"4. In a democratic policy 'election, is the mechanism devised to mirror the true wishes and the will of the people in the matter of choosing their political managers and their representatives who are supposed to echo their views and represent their interest in the legislature. The results of the Election are subject to judicial scrutiny and control only with an eye on two ends. First, to ascertain that the 'true' will of the people is reflected in the results and second, to secure that only the persons who are eligible and qualified under the Constitution obtain the representation. In order that the "true will" is ascertained the Courts will step in to protect and safeguard the purity of Elections, for, if corrupt practices have influenced the result, or the electorate has been a victim of fraud or deception or compulsion on any essential matter, the will of the people as recorded in their votes is not the 'free' and 'true' will exercised intelligently by deliberate choice. It is not the will of the people in the true sense at all. And the Courts would, therefore, it stands to reason, be justified in setting aside the election in accordance with law if the corrupt practices are established. So also when the essential qualifications for eligibility demanded by the constitutional requirements are not fulfilled, the fact that the successful

candidate is the true choice of the people is a consideration which is totally irrelevant notwithstanding the fact that it would be virtually impossible to re-enact the elections and reascertain the wishes of the people at the fresh elections the time scenario having changed. And also notwithstanding the fact that elections involve considerable expenditure of public revenue (not to speak of private funds) and result in loss of public time, and accordingly there would be good reason for not setting at naught the election which reflects the true will of the people lightly. In matters of election the will of the people must prevail and Courts would be understandably extremely slow to set at naught the will of the people truly and freely exercised. If Courts were to do otherwise, the Courts would be pitting their will against the will of the people, or countermanding the choice of the people without any object, aim or purpose. But where corrupt practices are established the result of the election does not echo the true voice of the people. The Courts would not then be deterred by the aforesaid considerations which in the corruption-scenario lose relevance. Such would be the approach of the Court in an election matter where corrupt practice is established. But what should happen when the material facts and particulars of the alleged corrupt practices are not furnished and the petition does not disclose a cause of action which the settled candidate can under law be called upon to answer? The High Court has given the answer that it must be summarily dismissed."

- "8. The argument is that inasmuch as Section 83 (1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83 (1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure applies to the trial of an election petition by virtue of section 87 of the Act. Since C.P.C. is applicable, the Court trying the election petition can act in exercise of the powers of the Code including Order 6, Rule 16 and Order 7 Rule 11 (a) which reads thus:—

Order 6, Rule 16: "Striking out pleadings,—The Court may at any stage of the proceedings order to be struck out or amend any matter in any pleading —

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or
- (c) which is otherwise an abuse of the process of the Court."

Order 7, Rule 11: "Rejection of plaint.—The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;

xxx

xxxx

xxx"

- "11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant's case (1969) 3 SCC 238: (AIR 1969 SC 1201) has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Udhav Singh's case (1977) 1 SCC 511 : (AIR 1977 SC 744) the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a

charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83 (1) (a). An election petition therefore can be and must be dismissed if it suffers from any such vice."

"12. Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The Courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the Court is satisfied that the action would terminate view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument....."

"38. In view of the doctrine laid down in Nihal Singh's case [1970 (3) SCC 239] (*supra*) as early as in 1970, the High Court was perfectly justified in taking the view that no cause of action was made out. For, in the absence of material particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and which facts went to indicate the respondent's consent to such distribution, the pleading would not disclose a cause of action. There would be nothing for the respondent to answer and the matter would fall within the doctrine laid down in Nihal Singh's case (*supra*).....".

29. In AIR 1987 SC 1577, *Dhartipakar Madan Lal Agarwal vs. Shri Rajiv Gandhi*, it has been held in paras 8 and 11 that :

"8. The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under O.VI, R.16, C.P.C. and to reject the election petition under O. VII, R. 11 and of the Code at the preliminary stage even though no written statement had been filed by the respondent. Section 80 provides

that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in S.100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss.81 and 82 or S. 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O.VI, R. 16 and O.VI, R. 17 are applicable to the proceedings relating to be trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of the petition which do not disclose any cause of action, are liable to be struck off under O.VI, R. 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the Court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R. 11."

- "11. In *Bhagwati Prasad Dixit 'Ghorawala' v. Rajiv Gandhi* (AIR 1986 SC 1534) this Court again reiterated that in an election pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action it should be rejected *in limine*. These authorities have settled the legal position that an election petition is liable to be dismissed *in limine* at the initial stage if it does not disclose any cause of action. Cause of action in questioning the validity of election must relate to the grounds specified in S. 100 of the Act. If the allegations contained in the petition do not set out grounds of challenge as contemplated by S. 100 of the Act and if the allegations do not conform to the requirement of Ss. 81 and 83 of the Act, the pleadings are liable to be struck off and the election petition is liable to be rejected under O. VII, R. 11. A pleading if vague and general is embarrassing. If the allegation contained in the election petition even assuming to be true and correct do not make out any case of corrupt practice on any ground under S.100 of the Act, the pleading would be unnecessary, frivolous and vexatious. It is always open to strike out the same. If after striking out defective pleadings the Court finds that no cause of action remains to be tried it would be duty bound to reject the petition under O.VII, R. 11, Civil P.C. If a preliminary objection is raised before the commencement of the trial, the court is duty bound to consider the same it need not postpone the consideration for subsequent stage of the trial."

30. In AIR 1995 Rajasthan 239, (*Mohammad Yusuf and another vs. Bhairon Singh Shekhawat*) the Hon'ble Single Judge of that Court, on careful perusal of the case law, in para 36 has enumerated the settled position of law like this :

"36. Following settled position of law emerges from the decisions already referred :

- (A) Section 83 of the Act is mandatory, hence an election petition must contain :
 - (a) a concise statement of facts on which the petitioner relies,
 - (b) fullest possible particulars of the corrupt practices that the petitioner alleges,
- (B) The material facts mean (a) facts necessary to formulate a complete cause of action, (b) all the preliminary facts which must be proved by the party to establish a cause of action, (c) the basic facts which constitute ingredients of particular corrupt practice, (d) all the facts which are essential to clothe the petitioner with complete cause of action, (e) the facts which if established would give the petitioner the relief asked for, (f) the facts on the basis of which the Court could give a direct verdict in favour of the election petitioner in case the returned candidate did not appear to oppose the petition, (g) facts which if not proved, the petition must fail.
- (C) A 'reasonable cause of action' is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. So long as the claim discloses some cause of action or raises some questions, the mere fact that the case is weak and not likely to succeed is no ground for striking it out.
- (D) There is a difference between the 'material facts' and 'particulars'. The function of particulars is to present as full a picture of a cause of action with such information in details as to make the opposite party understand the case he will have to meet. There may be some overlapping between 'material facts' and 'particulars' but the two are quite distinct. The distinction is one of degree. The 'material facts' are those which the party relies upon and which if it does not prove, he fails.
- (E) Mere reproduction of the words of the statute would not be sufficient to maintain a petition. The facts which constitute the corrupt practice have to be set out and they must be correlated to one of the heads of the corrupt practices.
- (F) Whether in an election petition a particular fact is material or not and as such required to be pleaded or not depends on charges levelled and the circumstances of the case. Thus decision of each case would depend on the facts and circumstances of that case.
- (G) An election petition can be summarily dismissed if it does not furnish a cause of action. If the mandatory requirements of Section 83 of the Act are not fulfilled, appropriate order under Order VI, Rule 16 and under Order VII, Rule 11 of the Code of Civil Procedure can be passed. The whole purpose of conferring such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise mind of the respondent. The sword of Damocles need not be kept hanging over his head without point or purpose. Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such power is warranted under the relevant provisions of law.
- (H) An election petition cannot be dismissed *in limine* for want of particulars without giving an opportunity to the petitioner to supply better particulars."

31. In respect of defective affidavit, the learned Judge in paragraphs 111 and 112 of the same report has held like this :

"111. Examining the present case in the light of the above observations, it would appear that the case is akin to F.A. Sapa's case (AIR 1991 SC 1557), so far as the contradictory verification of the petition and the accompanying affidavit creating confusion is concerned. It was pointed out that in the verification of the petition, paragraphs 1 to 5 were verified to be true to the petitioner's knowledge and the documents and the contents of paragraphs 6, 7, 8, 9, 10 and 11 were verified to be true on the information received and believed to be true. In the affidavit the entire paragraph-7 with its sub-paragraphs (a) to (e) was verified to be true to the petitioner's knowledge and the documents referred to therein. Thus paragraphs 7(a) to (e) are verified to be true on the basis of the information received and believed to be true in the petition whereas in the affidavit the same paragraph was verified to be true to the personal knowledge of the petitioner."

"112. It appears that directions given in F.A. Sapa's case (AIR 1991 SC 1557) to cure the defects were because of acceptance of alternative submission made in that case and it has not been held that in all cases of defective affidavit Court has to give an opportunity to remove the defects. This should be clear from the last sentence of paragraph 28 of the judgment, quoted above, where it was observed that where the affidavit or the schedule or annexure from an integral part of the election petition itself, strict compliance would be insisted upon. In the present case the affidavit cannot be said to be a separable part of the petition. It is no doubt an integral part of the petition. Without the affidavit in support of corrupt practices the petition would not have been complete and could not have been entertained. Defect in the affidavit was therefore defect in the petition. When verification of petition and the contents of the affidavit contradict each other and present a contradictory and confusing picture, the petition has to be taken to be defective in as much as it does not present a clear picture before the respondent and the Court. Information as to whether the allegations made in the petition were based on personal knowledge of the petitioner or on his derived knowledge is of vital importance to the respondent. Source of information may not be required to be disclosed initially but that does not mean that the petitioner is allowed to equivocate on the point to the extent that he can keep both the mutually exclusive options open to himself and surprise the respondent at the hearing by adopting one of the options suiting his convenience at that time. Self contradictory verification and affidavit has therefore to be taken as a fatal defect and not a curable defect."

32. It will be useful to take notice of the latest judgment of the Hon'ble Supreme Court reported in (1995) 5 SCC 347, (*Gajanan Krishnaji Bapat and another vs. Dattaji Raghobaji Meghe and other*). The case deals with the incurring or authorising expenditure in excess of the prescribed limits. It has been held in this judgment that in order to constitute corrupt practice under Section 123 (6) of the Act it is the violation of sub-section (3) only which is mandatory and not of sub-sections (1) and (2) of Section 77. This case involves some-what similar question which is involved in the present petition. The question that was canvassed before their Lordships of the Supreme Court pertained to the expenditure incurred or authorised by respondent No.1 or his election agent in that case which was alleged to be more than what had been disclosed by him in the return of expenditure under Section 78 of the Act with the District Election Officer and that huge expenditure incurred by him in connection with his election had been suppressed. In para 13, the observations appear like this :

"13. Though the election of a successful candidate is not to be interfered with lightly and the verdict of the electorate upset, this Court has emphasised in more than one case that one of the essentials of the election law is to safeguard the purity of the

election process and to see that people do not get elected by flagrant breaches of the law or by committing corrupt practices. It must be remembered that an election petition is not a matter in which the only persons interested are the candidates who fought the election against each other. The public is also substantially interested in it and it is so because election is an essential part of a democratic process. It is equally well settled by this Court and necessary to bear in mind that a charge of corrupt practice is in the nature of a quasi-criminal charge, as its consequence is not only to render the election of the returned candidate void but in some cases even to impose upon him a disqualification for contesting even the next election. The evidence led in support of the corrupt practice must therefore, not only be cogent and definite but if the election petitioner has to succeed, he must establish definitely and to the satisfaction of the court the charge of corrupt practice which he levels against the returned candidate. The onus lies heavily on the election petitioner to establish the charge of corrupt practice and in case of doubt the benefit goes to the returned candidate. In the case of an election petition, based on allegations of commission of corrupt practice, the standard of proof is generally speaking that of criminal trial, which requires strict proof of the charge beyond a reasonable doubt and the burden of proof is on the petitioner and that burden does not shift. (See with advantage: *Nihal Singh v. Rao Virendra Singh*; *Om Prabha Jain v. Charan Dass*; *Daulat Ram Chauhan v. Anand Sharma* and *Ruamerul Islam v. S.K. Manta*)."

While examining the scope of Section 77, it has been held in paragraph 21 like this :

'21. Section 77 of the Act provides that every candidate at an election shall either by himself or by his election agent keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both days inclusive. Explanation 1 which was introduced by the Amendment Act of 1974 declares that any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of sub-section (1) of Section 77. Sub-section (2) of Section 77 provides that the account of election expenses shall contain such particulars as may be prescribed and sub-section (3) lays down that the total of the said expenditure shall not exceed such amount as may be prescribed. *Vide* Section 78 of the Act the account of election expenses is required to be lodged with District Election Officer by every candidate at an election within thirty days from the date of election of the returned candidate. The maximum amount of election expenditure which may be incurred by the candidate for the parliamentary and assembly constituencies has been prescribed in Rule 90 of the Conduct of Election Rules, 1961. Insofar as the parliamentary elections are concerned, the said limit is Rs. 1,50,000/-. Under Section 123(6) of the Act, the incurring or authorising of expenditure in contravention of Section 77 of the Act amounts to commission of a corrupt practice. However, every contravention of Section 77 of the Act does not fall within the mischief of Section 123(6) of the Act. Neither the violation of sub-section (1) of Section 77 nor the violation of sub-section (2) of Section 77 amounts to the commission of the corrupt practice under Section 123(6) of the Act. However, Section 77(3) mandates that the total of the expenditure in connection with the election shall not exceed the prescribed limit and therefore the provisions of Section 123(6) of the Act are related only to Section 77(3) of the Act. If a candidate incurs or authorises expenditure in excess of the prescribed limits, he commits the corrupt practice under Section 123(6) of the Act and his election is liable to be set aside and he also incurs the disqualification of being debarred from contesting the next election. From a plain reading of

Sections 123(6) and 77 including Explanation 1 to Section 77 of the Act, It is therefore clear that in order to be a corrupt practice, the excessive expenditure must be incurred or authorised by the candidate or his election agent. An expenditure incurred by a third person, which is not authorised by the candidate or his election agent is not a corrupt practice. In *Magraj Patodia v. R. N. Birla*, after referring to a catena of authorities even before the inclusion of Explanation 1 to Section 77 of the Act by the Amendment Act 58 of 1974, it was emphasised that to prove the corrupt practice of incurring or authorising expenditure beyond the prescribed limit, it is not sufficient for the petitioner to merely prove that the expenditure beyond the prescribed limit had been incurred in connection with the election of the returned candidate, but he must go further and prove that the excess expenditure was authorised or incurred with the consent of the returned candidate or his election agent. In *Indira Gandhi v. Raj Narain* this Court reaffirmed the above view and taking note of the Amendment Act 58 of 1974 opined that voluntary expenditure incurred by friends, relations or sympathisers of the candidate or the candidate's political party are not required to be included in the candidate's return of expenses, unless the expenses were incurred in the circumstances from which it could be positively inferred that the successful candidate had undertaken that he would reimburse the party or the person who incurred the expense. It is not enough to prove that some advantage accrued to the returned candidate or even that the expenditure was incurred for the benefit of the returned candidate or that it was within the knowledge of the returned candidate and he did not prevent it, to clothe the returned candidate with the liability of committing the alleged corrupt practice. Noticing that during an election, the sponsoring or supporting political parties as well as friends, sympathisers and well-wishers do sometimes incur expenditure not only without the consent of the candidate concerned but even without his knowledge this Court opined that the successful candidate cannot be clothed with all such expense to suffer the disqualification

34 Section 77 of the Representation of the People Act, 1951 reads as under :

“77 Account of election expenses and maximum thereof.—(1) Every candidate at any election shall, either by himself or by his election agent keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

Explanation 1.—Notwithstanding any judgment, order or decision of any court to contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section :

Provided that nothing contained in the Explanation shall effect,—

- (a) any judgement, order or decision of the Supreme Court whereby the election of a candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974 (Ord. 13 of 1974) ;
- (b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against

such judgement, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement.

Explanation 3.—For the removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

35. Section 83 of the said Act deals with the contents of the petition and reads like this:

"83. Contents of petition.—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies ;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings :

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

36. Section 100 of the said Act lays down the grounds for declaring the election petition to be void. The same is reproduced hereunder :

"100. Grounds for declaring election to be void.

(1) Subject to the provisions of sub-section (2), if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963) ; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent ; or

(e) that any nomination has been improperly rejected ; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected —

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

2 If in the opinion of the High Court a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied —

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent ;

x

x

x

x

x

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void."

37. Section 123 deals with the corrupt practices and under sub-section (6) of that Section, incurring or authorizing of expenditure in contravention of Section 77 has been made a ground for setting aside the election. Sub-section (7) deals with the obtaining, procuring or abetting or attempting to obtain or procure by a candidate or his agent any assistance from any person the service of the Government and belonging to the specified classes thereunder. It reads like this:

"123. CORRUPT PRACTICES. — The following shall be deemed to be corrupt practices for the purposes of this Act; —

(1) to (6)

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(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person (with the consent of a candidate or his election agent), any assistance (other than the giving of vote for the furtherance of the prospects of that candidate's election, from any person in the person in the service of the Government and belonging to any of the following classes, namely: —

(a) gazetted officers;

(b) stipendiary judges and magistrates;

- (c) members of the armed forces of the Union ;
- (d) members of the police forces ;
- (e) excise officers ;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions ; and
- (g) such other class of persons in the service of the Government as may be prescribed :

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether, by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election."

38. Keeping in view the above referred to case law and the relevant provisions, the stage is now set to have a look at the averments made in the petition.

39. As already said in the earlier part of the judgment, paras 1 to 7 are simply introductory. In para 8 the allegation made is that the respondent in his return (Annexure P-1) of expenses has disclosed Rs. 1,90,257/- having been spent by him on the election process. This return is said to be incorrect. The prescribed limit in respect of election to Lok Sabha is Rs. 4,15,000/- for each parliamentary constituency.

40. In para 9 it is alleged that the respondent got published an advertisement and articles in his favour in Young Himachal Periodical (fortnightly) published on April 1, 1996. This publication is said to have been made for canvassing and electioneering work for securing votes for him. The periodical has been placed as Annexure P-2 and the respondent is alleged to have paid Rs. 2 lacs. for these advertisements and articles. It is also said in this very paragraph that the respondent got circulated a multi colour calendar Annexure P-3 and one lac copies of this calendar were distributed by him amongst the voters. The cost is said to be Rs. 5/- each and, thus, the respondent spent rupees five lacs on this calendar which has not been included by him in the expenditure return.

41. A perusal of this periodical shows that the article was published by the Zila Congress Committee, Mandi. Several photographs of the returned candidate taken on various occasions appear in this periodical. *prima facie*, the publication has been brought about by the political party, i.e. the Zila Congress Committee, Mandi. As per Explanation-I added to Section 77 of the Act, any expenditure incurred or authorised in connection with the election of a candidate by political party or by any other association or body of persons or by any individual (other than the candidate or his election agent); shall not be deemed to be and shall not ever deemed to have been expenditure in connection with the election incurred or authorised by the candidate or by his election agent. The allegation made is that it was the respondent who got published these advertisements and articles which fact, on the very face of the publication, belies the allegations made against the respondent.

42. It is not the case set up by the petitioner that the returned candidate got these publications through the District Congress Committee or that this was so published with his consent. The name of the respondent cannot be attributed to be there at his behest. The pleadings, thus, stand contradicted by the schedule itself.

43. The document can be viewed from another angle also. All expenses which fall within the mischief of Section 77 of the Act, would be from the date of the nomination of the candidate upto the date of declaration of the result, both dates inclusive. Admittedly, the returned candidate filed his nomination papers on March 30, 1996 as is made out from the return Annexure P-1. The last date for filing the nomination papers was April 3, 1996. The election programme was announced on March 9, 1996. The publication in question, i.e. Annexure P-2, is dated April 1, 1996. The petitioner, in the given situation, was, thus, required to plead the date, time and place where the periodical was published as well as the date, time and place of the payment alleged to have been made by the respondent and the name of the press as well as the person to whom the payments were made. As the publication is dated April 1, 1996, it presupposes that the arrangements in respect of the publication had been made much prior to its publication and unless the petitioner specifies a particular date, the allegations would be completely vague.

44. In case the expenditure was incurred prior to the filing of the nomination by the respondent, there would be no violation of Section 77 and if the expenses are said to have been incurred after the said date, the same were to be specified by the petitioner. As I look at the advertisement contained in this publication, the same has been published by one Ramesh Thakur, President of the Youth Congress Committee, Mandi. Another publication is by one Mohan Singh, President of Zila Congress (I) Committee, Mandi. Another advertisement at page 27 is by Dharamvir Dhami, General Secretary, HPCC (I), Kullu and the advertisement at page 30 is by Indar Singh Thakur, Chairman, H.P. Congress (I) Sewa Dal. The advertisement at page 31 carrying the photograph of returned candidate was published by District Congress (I) Committee, Mandi. The advertisement at page 33 is published by the Election Public Relation Committee Congress (I). The other advertisements are also published either in the name of the individuals or in the name of political parties. Assuming that the expenses were incurred after the nomination papers were filed, the expenses incurred would take out the averments from the mischief of Section 77 as expenses had been incurred by a political party association or body of persons or any individual. These expenses, thus, cannot be said to be in connection with the election expenses incurred or authorised by the candidate or by his election agent for the purposes of the said Section.

45. So far as publication of the calendar Annexure P-3 is concerned, there is not a whisper in the petition that it was got printed from the proprietor or the Young Himachal Weekly with the authorisation or consent of the respondent. The proprietor of the periodical might have thought it in his wisdom to issue this calendar for boosting his sale as the respondent, besides being a popular leader from the constituency, was also a minister at the relevant time. The allegations in respect of expenses incurred on this calendar like the one Annexure -2, are also lacking in material particulars inasmuch as nothing has been said in the petition fixing responsibility on the respondent or the same was distributed at which particular place, at what time and amongst whom. Another important line that appears on this calendar is that the same is complementary from Young Himachal Sundernagar. The words as they appear in Hindi read as, "SAPREM BHENT YOUNG HIMACHAL SUNDERNAGAR". On the face of it, it appears to have been published by the proprietor of the periodical as complementary. Nothing has been said in para 9 as to where, to whom, at what time and at what place and in which locality the one lac copies of this calendar were distributed. There is further no averment that who was in fact distributing it. The particulars are completely missing. The allegation is that Rs. 15 lac were incurred on the publication of this calendar. There is not a word said in para 9 that this expenditure was incurred by the respondent. The allegation is, thus, wholly vague and indefinite.

46. The next attack made on the respondent is in respect of booklet 'Himachal Sanchar Kranti Ka Model' (Himachal a mode of tele-communication revolution). This booklet contains

68 pages and it is said that the respondent got one lac booklets distributed amongst the voters and spent rupees five lac which amount has not been shown by him in the expenditure return. Towards the end of paragraph 10, it is said that this publication was got printed by Mandi Jankalyan Sabha from press in Madras with the consent of the respondent.

47. The booklet has been placed on record as Annexure P-4. On the title page is the photograph of the then Prime Minister of India Mr. Narsimha Rao. The booklet is informative. It was printed at Poompushar Pathippagam Press, Madras and was published by Mandi Jan Kalyan Sabha, 6/19, Subhash Marg, New Delhi. There is no indication in this publication as to at what point of time it was printed or published. There is a vague averment that it was got printed and published by the said Sabha with the consent of the respondent. The respondent is said to have incurred an expenditure of rupees five lac on this publication. The petitioner has not disclosed the date, time and place when the booklet was published and the date, time and place when the alleged payments were made, whether the payment was made to the press or to the other persons. It is further not known whether this publication appeared on the scene before the election was notified and if so, would it fall within the mischief of Section 77 of the Act or not?

48. The contents of the petition have been sworn on the personal knowledge of the petitioner. The non-disclosure of the material facts, in my considered opinion, renders the pleadings vague, defective and liable to be struck off. Time, place and date of the distribution of this booklet is also not stated. The booklet does contain the name of the publisher, i. e. Mandi Jan Kalyan Sabha, New Delhi. In reply to this paragraph, it has been stated by the respondent that the same was published by the Sabha of its own somewhere in February, 1996 or in the beginning of March, 1996. It has, thus, nothing to do with the electioneering.

49. Even otherwise, the expenses incurred by a person before his becoming a candidate for the purposes of election within the meaning of Section 79 (b) of the Act, are not to be taken into consideration for the purposes of Section 77 of the Act.

50. Once this position is accepted that the expenses were incurred by the Sabha, this had not to be reflected in the election expenditure return by the respondent. The expenses so incurred, would be safely covered by Explanation-I added to Section 77 (1) of the Act. The respondent cannot be said to have committed any corrupt practice because any act or conduct of the Sabha would not fall within the mischief of Section 123 (7) of the Act. The booklet contains the speech of the then Prime Minister of the country. There is nothing contained in this publication suggesting or holding out any threat, promise of compulsion to the electorates to vote in one way or the other. That is not even the case pleaded by the petitioner. Further, there are no averments as to the date, place, time and the mode of the alleged payment as well as distribution.

51. The allegation made in para 11 of the petition is that the respondent has exceeded the expenditure beyond the prescribed limit. The averments completely suffers from lack of material particulars in order to disclose essential facts. These are vague and general type of allegations without any specific averments.

51. In para 12 it is said that the respondent misused the Government machinery for the furtherance of the prospects of his election from the persons in service of the Government who were Gazetted Officers in the Press Information Bureau and Telecommunication. It is said that on April 9, 1996, the Publicity Incharge of the District Congress Committee, with the consent of the respondent, issued a press release which was communicated to the press through a FAX message and for that purpose, the facility of Fax machine was availed of. The press release has been placed as Annexure P-5 to the petition. On the top of this document "GMT, Chandigarh" is mentioned which, according to the petitioner, would mean 'General Manager Telecommunication, Chandigarh'. The allegation is that it was circulated through Government machinery and the respondent is guilty for misusing this machinery for furtherance of his election programme and

52. In para.13 it is said that a speech was delivered by the respondent at: Dharampur in District Mandi on April 9, 1996. The contents were released by Press Information Bureau, Government of India to the Press at Government expenses. This has been placed on record as Annexure P-6 and its English version is Ext. P-7. It is said that the issue was raised by several news-papers like the Tribune dated April 10, 1996, the Hindustan Times dated April 11, 1996, the Punjab Kesari dated April 10, 1996 and the Tribune dated April 11, 1996. The clippings of these news items have been placed on record as Annexures P-8/A to P-8/B respectively. The petitioner made complaint to the Election Commission of India which is Annexure P-9.

53. As said in para.14 of the petition, an enquiry was conducted by the Election Commission and the respondent was held guilty as is evident from the news item published in the Tribune dated April 23, 1996 placed as Annexure P-10.

54. The respondent has completely denied that any Government machinery was misused for campaigning, canvassing or electioneering work in order to secure votes by him. It has been specifically denied that he availed the services of Gazetted Officers of the Press Information Bureau or Telecommunication Department.

55. It has already been noticed above that the respondent was a Minister in the Central Government at the relevant time. If any Officer has done something in his official duty, the respondent cannot be held guilty of corrupt practices. The respondent has completely denied having issued any press statement on April 9, 1996. The same was neither issued by the Publicity Incharge of the District Congress Committee nor any FAX machine or any other machinery was so used. As I look at the press release, signatures of one Harish Gupta appear and in reply, it is stated that he was never appointed as Publicity Incharge of the District Congress Committee nor he was authorised by the respondent nor he ever gave his consent for the release of FAX message to the General Manager, Telecommunication, Chandigarh. According to the respondent, this appears to be manufactured and forged document to implicate the respondent falsely.

56. To contradict these averments, the respondent has placed on record Annexure R-1 which letter he had sent to the Election Commission of India. In the said letter he has clearly stated that he was totally ignorant of these happenings and there appeared to be a conspiracy against him to malign him in the election. It has also been said in the letter that the press notes, if issued, were without his approval and concurrence. In respect of Press Information Bureau, it was stated that he was unaware of the circumstances leading to the said issuance of the press note by the said authority which is not in his control.

57. Mr. Bahuguna, learned senior counsel, appearing for the petitioner, has brought to my notice the proviso to Section 123(7) of the Act. It is said therein that where a person, in the service of the Government and belonging to any of the classes aforesaid in the discharge or purported discharge of his official duty, makes any arrangement or provides any facilities or does any other act or thing even if it is with the consent of the candidate or his election agent, such arrangement or facility or act or thing shall not be deemed to be the assistance for furtherance of prospects of that candidate's election. According to the learned counsel, if any Officer has provided a facility in the given situation, the same is covered by the proviso. Even if the allegations made in the petition are accepted at its face value, it is only the use of the FAX machine which is highlighted. It has nowhere been averred that the press release was made with the consent of the respondent or he had any role in its release as such.

58. At worst, what has been said in para.12 is that the Publicity Incharge, District Congress Committee, Mandi with the consent of the respondent, issued a press release. There is complete omission that the respondent ever authorised or consented to the said Incharge for the release to be communicated to the press through FAX machine and for that purpose the FAX machine

was used with the consent and authorisation of the respondent. The allegation, in my considered opinion, in no way involves the role of the respondent in the misuse of the Government machinery or the use of the Officers of the Government for furtherance of his election programme or prospects. So could be the answer in respect of the contents of the speech which were released by the Press Information Bureau, Government of India.

59. A perusal of the press report appearing in the Tribune published from Chandigarh on April 23, 1996, carries the headline, "Officials warned in Sukh Ram's case". In the news it is said that the Election Commission has expressed displeasure over the official communication facilities by the Union Minister, Mr. Sukh Ram, and warned the officials for allowing the use of Government telecommunication facilities in a routine manner.

60. It appears that the fact of the use of the FAX machine came to the notice of the Election Commission and having come to know of it, its displeasure was conveyed for the manner in which these were allowed to be used. The averments even if taken as these have been projected in the petition, would, at the most, amount to the violation of the Codes set by the Election Commission for the purposes of free and fair elections. This has not been made a ground for setting at naught the election in the grounds, for that purpose as enumerated in the Act. Notice may also be taken of the fact that the Press Information Bureau was not under the control of the respondent.

61. I am further of the view that contents of paras 12, 13 and 14, besides being vague and lacking in material particulars and facts are not covered within the purview of Section 123 (7) of the Representation of the People Act and as such are liable to be struck off. The mere use of a Government FAX machine for releasing a press statement, in no situation, would be termed as corrupt practice as contemplated by Section 123 (7) of the Act.

62. Notice may also be taken of the verification part of the affidavit filed with the petition. It would be better to reproduce it hereunder :

"I, Adan Singh son of Shri Dagnoo Ram, the petitioner, do hereby verify that the contents of paras 1 to 16 of the election petition are true to my personal knowledge.

Verified at Shimla on 26th day of June, 1996."

Once the petitioner has opted to verify the contents of the petition on personal knowledge, the contents as disclosed are not in conformity with the provisions laid down in the Act. If the petitioner has based the contents on his personal knowledge, the contents should have been more informative carrying full particulars with complete facts.

63. Notice may also be taken of the judgment passed by this Court in Election Petition No. 1 of 1995, (Bipin Singh Parmar vs. Kanwar Durga Chand, decided on April 10, 1997). In that case also, the petition was ordered to be rejected for want of compliance of Section 83 of the Act, i.e. failure to incorporate in the petition material facts and particulars relating to the alleged corrupt practice. The petition was ordered to be dismissed summarily as disclosing no cause of action.

64. In view of the law laid down by the Hon'ble Supreme Court, discussed in the earlier part of this judgment, this Civil Miscellaneous Application No. 1/97 is allowed and paras 8 to 14 of the election petition are ordered to be struck off.

65. As nothing else survives in the election petition, the same is liable to be rejected at the threshold for not disclosing a cause of action. Consequently, the election petition is ordered to be dismissed with costs which are assessed at Rs.10,000/-.

May 29, 1997.

Seal.

Sd/-

P. K. PALLI,

Judge.

By order,

Sd/-

(K. J. RAO)

Secretary,

Election Commission of India.